IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1384 of 1993
with
CRIMINAL APPEAL No 259 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAUHAN PRATAPJI BHARTHIJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1384 of 1993
MR KR RAVAL for Petitioner No. 1
MR HL JANI, Ld. APP for Respondent No. 1

2. Criminal Appeal No. 259 of 1994
MR HL JANI, Ld. APP for Petitioner No. 1
MR KR RAVAL for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 26/03/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was charged with killing his wife by pouring kerosene on her and setting her on fire. The incident was alleged to have occurred at about 3.30 a.m., after mid-night of 25-11-1992 in the house of the appellant at Village Gerita, Taluka Vijapur, District Mehsana. He was also charged with the offence punishable under Section 498(A) of IPC. The learned Additional Sessions Judge, Mehsana, who tried the appellant in Sessions Case No.51 of 1993, found him guilty of the offence punishable under Section 302 of IPC and sentenced him to life-imprisonment. He, however, acquitted the appellant of the offence punishable under Section 498(A) of IPC. The medical evidence clearly shows that the wife of the appellant, Shangarba died of burns. Dr.Bogilal Keshavlal Patel (PW-5) has stated in his evidence that he carried out the postmortem between 4.30 and 6 O'clock on 25-11-1992 and noted burns from first degree to third degree on different parts of the body. He has clearly stated that the cause of the death was excessive burns. He also stated that the said such burns were possible if kerosene was poured on a person and was set on fire. According to him, clothes of the deceased also smelt of kerosene. It is not in dispute that the deceased Shangarba died in the house itself and could not receive any treatment.

2. The prosecution case mainly rested on the evidence of Bhavnaben (PW-2), daughter of the appellant and the deceased Shangarba and evidence of two other witnesses, namely Bhikaji Shivaji Chauhan (PW-3) and Bharthaji Amthaji Chauhan (PW-4).

3. Bhavnaben (PW-2) was aged about 14 years when she gave evidence. Her evidence shows that at the time of the incident, she was sleeping on the oshri, while the appellant, her mother and her younger sister were sleeping inside the house and the door was locked from inside. She woke up at night on hearing the low cries of her grand-mother. When she looked through the crevice in the door, she saw her mother was burning and her father was pressing her legs. She, therefore, raised shouts and on hearing the shouts, her uncle, Bhikaji Shivaji, Babuji Baldevji and her grand-father Bharthaji came running there. Bhikaji Shivaji kicked open the door and saw that the deceased was burning. Soon after, her mother died.

Bhikaji Shivaji and Bharthaji Amthaji have stated in their evidence that they rushed on hearing the cries of the deceased and Bhikaji stated that he broke open the door. Both found the appellant and his wife lying inside the house. Nothing was brought out in the cross-examination of these witnesses, which would shake their credit-worthiness or reliability. There is no reason to disbelieve or discard their evidence. In his defence the accused offered no explanation. It is clear from the evidence on record that he had made no attempt to open the door and to save Shangarba when she was burning. The learned Sessions Judge has rightly come to the conclusion that from the circumstances of the record of the case, the possibility of suicide was ruled out and the only inference would be that it was the appellant who had poured kerosene and set fire to his wife. We have carefully gone through the evidence and we do not find any reason to take a different view. The conviction of the appellant under Section 302 of the IPC is, therefore, required to be confirmed.

4. The State has also filed Criminal Appeal No.259 of 1994, challenging the acquittal of the appellant of the charge under Section 498(A). The learned Sessions Judge has observed in his judgement that the marriage life of the accused with the deceased may not have been happy and there may have been disputes, but there is no evidence that he has subjected his wife to cruelly. In the circumstances, he gave benefit of the doubt to the appellant. It is not possible to say that the view taken by the learned Sessions Judge on this point is unreasonable or perverse so as to call for interference. There is no compelling reason to take a different view. The result is that both the Criminal Appeals No.1384 of 1993 filed by the appellant, challenging his conviction under Section 302 and No.259 of 1994 filed by the State, challenging acquittal under Section 498(A) fail and are accordingly dismissed.

26-3-2002 (M. C. Patel, J.)

(A. L. Dave, J.)

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